



Appeal Decision

Site visit made on 21 October 2025

by **L Reid BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 November 2025

Appeal Ref: APP/Z5060/W/25/3367628

443 Porters Avenue, Dagenham RM9 4ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Alex Martin against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref is 24/01453/FULL.
 - The development is described as "continued use of Existing Class E (restaurant), proposed additional mixed sui generis use for shisha/ancillary".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application form indicates that the development has not commenced. However, it was apparent from my site visit that the use has commenced. For clarity, I have based my decision on the submitted plans.
3. The appellant has submitted new evidence in the form of a Noise Impact Assessment (the noise assessment)¹ and a cover letter regarding odour and fumes with the appeal. This additional evidence would not result in a development substantially different from that applied for. Given the nature of this evidence, it would not deprive those who were entitled to be consulted on the application of the opportunity to make representations that they may have wanted to make. Its acceptance does not give rise to procedural unfairness, and I have therefore considered it in my assessment.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring occupiers in regard to noise, fumes and odours.

Reasons

5. The appeal relates to the ground-floor commercial unit of a three-storey building, which has residential accommodation on the upper floors. The building sits within a terrace which consists of various commercial uses with residential above. The windows of the residential properties located on the upper floors of the terrace overlook the development. There is also residential development in William Ash Close, which is adjacent to the rear of the appeal site.

¹ Noise Impact Assessment, 16th April 2025 Issue 01

6. There is an open roof at the rear of the appeal site. The by-product of a shisha use is smoke, and this smoke can be very pungent. Despite being located at the rearmost part of the site, because of the open-roof configuration, there is potential for surrounding occupiers to experience nuisance through the travelling of shisha fumes and odours that are dispersed from the site. This unneighbourly effect is likely to be exacerbated, particularly in pleasant and hot weather when these residential occupiers have their windows open.
7. No fume or odour impact assessment has been submitted, which is a key concern given the open-roof design and proximity to upper-floor residential windows. The effectiveness of the existing extraction and filtration system remains unclear, and while the appellant has indicated a willingness to accept a CO detector condition, no supporting details have been provided. Without this information, a robust assessment of emission control is not possible. As this issue is central to the acceptability of the development, it cannot be resolved through a planning condition alone.
8. Limiting operating hours would not effectively mitigate the adverse impacts from fumes and odours, as it only reduces their duration, not their emission. The boundary treatment merely separates the site from the neighbouring property and would not prevent emissions from escaping through the open roof. Despite limited details, the site's previous fast food use may have produced fumes and odours. However, shisha use differs as it legally requires smoking in an unenclosed space, increasing the likelihood of emissions dispersing into the air. While nearby garages and extraction flues may also emit fumes and odours, it has not been demonstrated that their impact on surrounding occupiers is comparable to or greater than that of the development in terms of proximity and emissions levels.
9. The noise assessment identifies the nearest noise-sensitive receptor as a residential window within the flats in William Ash Close. Predicted façade noise levels are 39 dB, resulting in an indicative internal level of 26 dB LAeq with windows open. This falls below the desirable internal ambient noise levels set out in BS8233:2014. There is nothing before me to show that the upper-floor residential units in the terrace are either closer to the appeal site or subject to lower background noise levels than those in William Ash Close. On the basis of the assessment, it is considered that noise impacts to these upper-floor units would also be acceptable. Should the appeal succeed, planning conditions could be imposed to restrict operating hours and prohibit amplified music, thereby providing further protection from noise in line with the aims of Policy D14 of the London Plan 2021 (the London Plan).
10. Although I have found the development to be acceptable in terms of noise, in the absence of clear evidence to demonstrate otherwise, I conclude that the development harms the living conditions of the neighbouring occupiers in regard to fumes and odours. The development therefore conflicts with Policies DMD1 and DMSI3 of the Barking and Dagenham Local Plan 2020 – 2037 (the Local Plan). These policies amongst other things, require development to manage and mitigate the impacts of nuisance generated through the operation of development (such as odour and fumes) on people.
11. The reason for refusal refers to Policy SP2 of the Local Plan and Policies D4 and D6 of the London Plan. These policies relate to design and housing quality and standards; they are therefore not determinative in the context of this main issue.

Other Matters

12. While the site's previous use as a restaurant may represent a realistic fallback position, the shisha use requires an open-air configuration. Limited information has been provided to demonstrate how this setup would compare to the restaurant use, or whether the restaurant use would generate similar levels of fumes and odours. Given this lack of detail, I can only give this fall-back position limited weight.
13. Very limited details have been provided regarding the approved development at 55-57 Cranbook Road². As such, I cannot be certain that it is directly comparable with the appeal development in terms of impact on neighbouring properties. This approval does therefore not weigh in support of the appeal.

Planning Balance

14. The Council raised no objection on grounds relating to the principle of development, design, daylight/sunlight, overshadowing and overbearingness. However, compliance with relevant national and local planning policies on these matters would be required in any case. These matters are therefore of neutral weight.
15. The appellant's extensive efforts to improve the site and address security issues are acknowledged. The development is supported by parts of the National Planning Policy Framework in supporting economic growth, providing employment opportunities, and making use of a brownfield site. Located within a designated commercial area, the development could contribute positively to footfall and the evening economy, enhancing local vitality and viability. However, these benefits are tempered due to the modest scale of the business and would therefore not outweigh the harm identified above.

Conclusion

16. The development conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

L Reid

INSPECTOR

² Council Ref: 2913/23